



## **REDESIGNATION OF CLARK AND FLOYD COUNTIES TO ATTAINMENT OF THE ONE HOUR OZONE STANDARD**

#02-88(APCB) / LSA Document #02-88

### **Overview**

Incorporates into state rules U.S. EPA's final approval redesignating Clark and Floyd Counties to attainment of the one-hour ozone standard and amends other rule sections referring to nonattainment status of counties.

### **Citations Affected**

*Amends:* 326 IAC 1-4-1, 326 IAC 4-1-4.1, 326 IAC 8-2-9, and 326 IAC 13-3-1.

### **Affected Persons**

Citizens in Clark and Floyd Counties and current and future industry.

### **Reason for the Rule**

To incorporate by reference the changes to the federal law under Title 40 of the Code of Federal Regulations that change the ozone designation from nonattainment to attainment.

### **Economic Impact of the Rule**

There will be a positive economic impact from the rule because permitting requirements for new and expanding businesses are less onerous in attainment counties.

### **Benefits of the Rule**

The rule reflects improved air quality in this area, which has a positive impact on public health.

### **Description of the Rulemaking Project**

On October 9, 2001, U.S. EPA announced that Clark and Floyd Counties, part of the Louisville Moderate Ozone Nonattainment Area, monitored attainment of the national ambient air quality standard for ozone and met all applicable requirements of the 1990 Clean Air Act Amendments. As a result, U.S. EPA approved Indiana's request to redesignate the area to attainment of the national ambient air quality standard. The final approval was published in the Federal Register on October 23, 2001 and

effective on November 23, 2001. U.S. EPA also approved the maintenance plan for Clark and Floyd Counties, which includes a contingency plan that will be implemented if air quality standards are exceeded, a commitment to maintain existing control measures and air monitoring, and a motor vehicle emissions budget which assures that potential increases in emissions from motor vehicles will not compromise air quality.

This rulemaking incorporates EPA's approval of the redesignation in the October 23, 2001, Federal Register into state rules. Until the state rulemaking is effective, these counties will be subject to the state's nonattainment rules, including the permitting rules. Additionally, this rulemaking amends the state rules to remove specific references to Clark and Floyd Counties as nonattainment areas for ozone. This rulemaking clarifies that rules included in the maintenance plan for Clark and Floyd Counties continue to apply to the redesignated area.

### **Scheduled Hearings**

First Public Hearing: June 5, 2002 at 1:00p.m., Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved

through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The amended rules are consistent with federal rules.

### **Rulemaking Process**

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The second type of notice is a notice under IC 13-14-7 (a "section 7" notice). A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required because the policy alternatives available are so limited that there would be no benefit to the environment or affected persons. It contains the commissioner's determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a notice under IC 13-14-9-8 (a "section 8" notice). A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public comment periods are required for one of the specific reasons listed in the statute. It contains the commissioner's determination and findings, the draft rule and a notice of first meeting/hearing. In each case the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the

Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).